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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

PLACER COUNTY SHERIFF,

Plaintiff and Respondent,

v.

FRIENDS OF AUBURN/TAHOE VISTA-PLACER
COUNTY ANIMAL SHELTER, INC.,

Defendant and Appellant.

C058472

(Super. Ct. No.
SSP494)

This is an appeal from an order of the Placer County Superior Court revoking the appointment of Rosemary Frieborn as a humane officer. Frieborn was appointed by defendant Friends of Auburn/Tahoe Vista-Placer County Animal Shelter, Inc. (Friends) under provisions of the Corporations Code authorizing the formation of humane societies and granting them exclusive authority to appoint humane officers. Friends, a humane society, sought and received an order from the Placer County Superior Court confirming the appointment. Subsequently, plaintiff Placer County Sheriff (Placer) filed a petition to revoke the appointment. The court granted Placer's petition and

Friends appeals, contending: (1) the court lacks jurisdiction to entertain a collateral attack on the earlier order appointing Frieborn a humane officer; (2) since Frieborn was not a party to the action, due process precludes the trial court's revocation of her humane officer occupation; and (3) no valid basis exists for revoking Frieborn's humane officer appointment. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Humane Societies and Humane Officers

The California Corporations Code outlines the process and procedures for appointing humane officers.¹ Section 10400 of that code states that a group of 20 or more persons may form a humane society. Each director of the society must sign the articles of incorporation. (§§ 5120, subd. (b), 10400.)

A prospective humane society must apply to the Department of Justice for endorsement. (§ 10401.) If that endorsement is not forthcoming within 90 days, the humane society may apply for endorsement to the superior court in the county in which its principal office is located. (§ 10402.) The court, "after giving due consideration to the necessity of such corporation and assuring himself that the incorporators are acting in good faith," may endorse the humane society's articles. (§ 10402.)

Only corporations established under section 10400 may apply for the appointment of humane officers. (§ 14502.) It is the

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

duty of humane officers to enforce the laws for the prevention of cruelty to animals. (*Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 143.)

A humane society must wait six months after endorsement of its articles of incorporation and secure at least \$1 million in insurance before appointing humane officers. (§ 14502, subd. (a)(2).) A humane society may appoint level 1 or level 2 humane officers. Level 1 officers may carry firearms; level 2 officers may not. Although humane officers are not designated as peace officers, they may exercise the powers of a peace officer to prevent acts of cruelty to animals. Both levels of officers may make arrests for violations of the penal laws related to animals and may serve search warrants. (§ 14502, subds. (a), (i).)

A humane society's appointment of a humane officer is subject to the superior court's approval. (§ 14502, subd. (b).) The California Department of Justice is required to submit to the superior court any criminal record of the proposed employee. (§ 14502, subd. (c).) After receiving the information, the court reviews the appointee's qualifications and fitness to act as a humane officer. If the superior court reaffirms the appointment it issues a court order confirming the appointment. (§ 14502, subd. (d).)

Friends

Friends filed its articles of incorporation (the articles) with the Secretary of State's Office on August 16, 1999. The articles listed the purpose of Friends as "focusing public

attention on shelter facilities and needs; to assist shelter personnel as required; to improve animal health care, increase shelter hours of operation and adoption percentages; to stimulate gifts of service, endowments, bequests and grants; and to provide community education programs." The articles made no mention of the enforcement of animal cruelty laws, nor did they reference the appointment of humane officers.

Friends, in June 2007, notified Placer that it was in the process of appointing a level 2 humane officer. The following month, Friends approved a resolution nominating a level 2 humane officer for appointment.

In August 2007 Friends filed a certificate of amendment of articles of incorporation with the Secretary of State. The amended articles included, as a new purpose, "protect[ion of] animals through education and enforcement of current animal humane laws."

On September 5, 2007, Friends filed a petition with the court requesting confirmation of the appointment of a level 2 humane officer. On September 6, 2007, the superior court confirmed Friends's appointment of the level 2 humane officer.

On October 10, 2007, Placer sent a letter to Friends outlining the deficiencies in both the appointment and the court's subsequent confirmation. The letter specified Friends's failure to meet the statutory requirements and noted: "Given these issues, the enforcement of animal welfare laws by Friends inappropriately exposes your organization and the County to potential liability. The Sheriff's Department could be drawn

into these problems if it were to assist your Humane Officer with such enforcement activities. This letter provides you with notice that the Department will not be able to respond to calls for assistance from your Humane Officer until the deficiencies noted above are corrected and further documentation is provided to the court."

After Friends failed to respond, Placer sent a second letter on October 25, 2007. Placer again reiterated its concerns with the appointment and stated that unless Friends responded, Placer was prepared to file a petition to revoke the appointment.

On November 5, 2007, Friends notified Placer that it had received the prior correspondence and was in the process of responding. On November 28, 2007, having received no further response from Friends, Placer filed a petition to revoke the appointment of a humane officer under section 14502, subdivision (g) (2).

The superior court, on November 29, 2007, issued an order stating Friends was a humane society for the prevention of cruelty of animals. The court made the determination retroactive to 1999. The order noted: "Petitioner recently recognized that [Friends] requires the endorsement of its Articles of Incorporation from this Court to be formally recognized as an organization that prevents cruelty to animals and enforce those laws."

On February 22, 2008, following a hearing, the superior court ordered the revocation of the appointment of the humane

officer. The court rejected Friends's contention that the court lacked jurisdiction to consider the matter, or that Placer's petition constituted an improper collateral attack on the earlier superior court order. The court found Placer's petition specifically authorized by section 14502, subdivision (g)(2).

The court further found Placer demonstrated good cause for revocation. The court noted Friends's failure to comply with liability insurance requirements, improper appointment of the humane officer, and Friends's failure to notify Placer of the previous court hearings.

The court granted the petition and concluded: "This is not to say that the court finds fault in any way with the worthy intentions or performance of the humane officer. Nor does this ruling mean that a properly incorporated entity may not make an appointment of a humane officer if it strictly complies with the requirements of Corporations Code section 14500, et seq."

Friends filed a timely notice of appeal.

DISCUSSION

I

Friends contends the superior court lacked jurisdiction to consider Placer's petition, which Friends describes as a collateral attack on the court's earlier appointment of the humane officer. We disagree.

Section 14502, subdivision (g), which authorizes a revocation hearing, states, in part: "(1) The corporation appointing an officer may revoke an appointment at any time by filing in the office of the county clerk in which the

appointment of the officer is recorded a copy of the revocation in writing under the letterhead of the corporation and duly certified by its executive officer. . . . [¶]

(2) Notwithstanding paragraph (1), a revocation hearing may be initiated by petition from any duly authorized sheriff or local police agency or the State Humane Association of California. The petition shall show cause why an appointment should be revoked and shall be made to the superior court in the jurisdiction of the appointment."

Notwithstanding the plain language of the statute, Friends contends Placer's petition to revoke the appointment constituted an improper collateral attack on the court's earlier order confirming the appointment. In support, Friends cites *In re ANNRHON, Inc.* (1993) 17 Cal.App.4th 742 (*ANNRHON*).

In *ANNRHON*, two directors on a four person corporate board successfully obtained a superior court order appointing a provisional director pursuant to Corporations Code section 308, which authorizes such an appointment when a deadlock exists on a corporate board. The other two directors appealed. (*ANNRHON, supra*, 17 Cal.App.4th at pp. 746-750.) Friends reads *ANNRHON* as requiring the party objecting to an appointment to appeal and disallowing a collateral attack on the appointment. Friends's broad reading of *ANNRHON*, which considered a completely different statutory scheme and announced no such rule, does not persuade us.

Friends also argues section 14502, subdivision (g) (2) "allows only a challenge to the conduct of a humane officer

subsequent to his or her appointment -- not to the court's Order of appointment." However, section 14502 contains no such restrictive language. Instead, the statute allows revocation once the party shows cause why an appointment should be revoked. Given the broad language of the statute, such cause may be based on the facts under which the humane officer was appointed as well as the performance of the officer after appointment.

Section 14502, subdivision (g) specifically authorizes a sheriff's department to petition the court to revoke the appointment of a humane officer. Placer's petition is appropriate under the statute and does not collaterally attack the earlier appointment.

II

Friends contends that since Frieborn was not a party to the action, the court's revocation of her humane officer appointment was an improper taking of her statutory interests in violation of both federal and state due process. Friends argues Frieborn's status as a humane officer, like a professional license, was a property interest protected by due process rights.

However, even assuming Frieborn, by virtue of her humane officer appointment, possessed a property interest protected by due process considerations, we find the parties before the court adequately protected those interests. An absent party is not considered an indispensable party where the parties before the court adequately represent the absent party's interests.

(*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 161.)

Here, Friends and Frieborn possessed the identical aim of retaining her appointment as a level 2 humane officer. Frieborn, in her declaration, acknowledged actively helping her counsel in preparing the defense of her appointment. Frieborn provided both declarations and documentation in support of Friends's defense of her appointment. Friends adequately represented Frieborn's interests, and the court did not "blithely" proceed to deprive her of her statutory rights.

III

Friends argues the court erred in finding Placer established good cause sufficient to support its petition for revocation. Specifically, Friends argues the court was mistaken in criticizing the organization's lack of insurance and any issues of corporate validity are not sufficient to support a finding of good cause.

Friends contends the court in its ruling "only discussed the alleged inadequate liability insurance flaw," and "[b]y not discussing any other of the alleged defects, the court failed to show how any of these alleged defects were a **legal** basis for revoking the appointment." Friends is mistaken.

As previously noted, the court, in granting Placer's petition, specifically discussed, in addition to the issue of insurance, the improper appointment of the humane officer and Friends's failure to notify Placer of the previous court

hearings. The court did not base its decision solely on the question of Friends's insurance compliance.

Our review of the record supports the court's conclusion that Placer established good cause for revoking Frieborn's appointment as a humane officer. Friends failed to comply with the statutory requirements to appoint a humane officer.

Section 10401 requires that prospective humane societies apply to the Department of Justice for endorsement. Nothing in the record shows such an application by Friends of either the 1999 articles of incorporation or the amended articles of incorporation. Nor does the record reflect that the Department of Justice was ever provided a background report on the prospective humane officer as required by section 14502, subdivision (c).

In addition, although Friends strenuously argues otherwise, the court found Friends's required proof of insurance wanting. Friends submitted one policy with its petition to confirm that expired more than 10 weeks prior to the filing of the petition. A second insurance policy submitted by Friends did not cover property damage, but only executive protection and employment practices liability.

In an effort at compliance, Friends filed a request to amend pleading with an insurance certificate dated October 22, 2007. The court found the document unpersuasive: "The date of the certificate issuance on Exhibit 5 appears to be October 22, 2007, well after Judge Gaddis' order [confirming the appointment]. Presumably, if the required insurance coverage,

in fact, was in effect at the time respondent Friends sought the court's prior order, respondent easily would have been able to produce such evidence at this time. However, Friends did not do so."

In sum, the record provides ample support for the court's finding of cause sufficient to revoke Frieborn's appointment as a humane officer.

DISPOSITION

The judgment is affirmed. Placer shall recover costs on appeal.

RAYE, J.

We concur:

SCOTLAND, P. J.

SIMS, J.